

Court No. 2

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL.

Appeal from order No. 160 of 2002

United India Insurance Company Limited,
though its Divisional Manager,
Divisional Office, Tikonja,
Haldwani, District-Nainital..

..... Opp.party/Appellant.

Versus

(1) Sri Vinod Kumar S/o Sri Purshottam,
R/o Village Dhanauri, P.S. & Tehsil Swar,
District- Rampur.

.....Claimant/Respondent.

(2) Sri Mohd. Yunus S/o Sri Inayat Ali,
R/o Mohalla Rasulpur, P.S. and Tehsi
Swar, District -Rampur

.....Opp.party/Respondent.

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Sri Prabhat Pandey, learned counsel for the appellant.
Sri A.N.Sharma, learned counsel for the respondent No.2

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Date: 13th September, 2004.

Hon'ble P.C.Verma, J.
Hon'ble B.S. Verma, J.

This is an appeal preferred by the opposite party- United India Insurance Company under Section 173 of the Motor Vehicles Act against the impugned judgment and award dated 12.04.2002 passed by the Motor Accident Claims Tribunal/II Additional District Judge, Udham Singh Nagar in Motor Accident Claim Case No. 37 of 2001, whereby the claim petition has been decreed for a compensation of Rs. 3,33,340.00 against the opposite party No.2- appellant / Insurance Company alongwith interest at the rate of 9% per annum from the date of filing of the claim petition till the date of payment.

2- Brief fact given rise to this appeal are that on 11.11.2000 petitioner Vinod Kumar alongwith other people

was travelling in vehicle Tata-709 UP-22-7495 to go to Garjia fair. On the way the said vehicle turned turtle due to rash and negligent driving of the driver in which the petitioner and other persons sustained grievous injuries and one child died on the spot. The petitioner got him treated in Government Hospital Swar and thereafter in Dr.Prashant Nursing Home, Kahispur. In this accident the petitioner Vinod Kumar aged 25 years has become handicap. He was earning Rs. 3000/- per month by doing job in Maurya Maintha Industries, Village-Kareempur. He filed claim petition for compensation of Rs. 7,00,000/- due to injuries received by him in the said accident.

3- The opposite parties contested the claim petition before the Tribunal by filing their separate written statements. The Opp. party No.1-Mohd. Yunus in his written statement admitted the accident but alleged that the driver of the said truck was driving the truck cautiously. The injuries person was going negligently on foot on the road. He further pleaded that the petitioner has filed a claim petition bearing No. 7 of 2001 in the Court of District Judge, Rampur of the same accident. For one and the same accident, two petitions cannot be filed and due to this the petition is liable to be dismissed. The Opp.party No.2 – the United India Insurance Company pleaded that the petitioner was traveling in the said truck No. UP 22-7495 as unauthorised passenger. Hence due to violation of the conditions of the insurance policy the Insurance Company is not liable to pay the compensation. The Tribunal in the basis of the pleadings of the parties, framed the necessary issues. The learned Tribunal in its judgment has referred application paper No.34-C in which the petitioner submitted that the petition bearing No. 7/2001 which was filed in the Courts at Rampur has been

withdrawn and at present only the aforesaid petition is pending. The petitioner has examined himself as P.W.1 and state on oath that on 11.11.2000 he boarded in Mini Truck Tata -709 No.UP-22-7495 alongwith other people for going to Garjia fair, Ramnagar the said truck, due to rash and negligent driving of the driver, turned turtle on the road, in which he and other passengers sustained injuries. The Tribunal on the basis of the said evidence, decreed the claim petition accordingly.

4- The learned counsel for the appellant pressed the appeal on the grounds that the injured was traveling in a Goods Carriage Vehicle as an unauthorised and gratuitous passenger. Hence due to breach of specified condition of insurance policy, the insurer can not be held liable and because the said vehicle Truck No. UP-22-7495 was carrying 30 passengers at the time of accident and, therefore, plied against the purpose not allowed by permit under which the vehicle was used, therefore no compensation could be paid. Undisputedly, the petitioner was traveling in the said truck while going to Garjia fair, Ramnagar alongwith other persons. In the accident he sustained injuries and has become hundred percent handicap. In this regard certificate issued by Chief Medical Officer, Rampur paper No.24-C has been field before the Tribunal.

5- The learned counsel for the appellant relied on the Apex Court's judgment in the matter of *National Insurance Company Ltd. Vs. Baljit Kaur and others; (2004) 2 S.C.C. page 1*, in which the Hon'ble Court has delta with the payment of compensation to the gratuitous passengers and directed the insurance company to satisfy the award amount in favour of the claimant, if already no satisfied

and receive the same from the owner of the vehicle. Para-21 of the aforesaid judgment is reproduced as under:-

“The upshot of the aforementioned discussions is that instead and in place of the insurer the owner of the vehicle shall be liable to satisfy the decree. The question, however, would be as to whether keeping in view the fact that the law was not clear so long such a direction would be fair and equitable. We do not think so. We, therefore, clarify the legal position which shall have prospective effect. The tribunal as also the High Court had proceeded in terms of the decision of this Court in Satpal Singh. The said decision has been overruled only in Asha Rani. We, therefore, are of the opinion that the interest of justice will be subserved if the appellant herein is already satisfied, and recover the same from the owner of the vehicle. For the purpose of such recovery, it would not be necessary for the insurer to file a separate suit but it may initiate a proceeding before the executing court as if the dispute between the insurer and the owner was the subject matter of determination before the Tribunal and the issue is decided against the owner and in favour of the insurer. We have issued the aforementioned directions having regard to the scope and purport of Section 168 of the Motor Vehicles Act, 1988, in terms whereof, it is not only entitled to determine the amount of claim as put forth by the claimant for recovery thereof from the insurer, owner or driver of the vehicle jointly or severally but also the dispute between the insurer on the one hand and the owner or driver of the vehicle involved in the accident inasmuch as can be resolved by the Tribunal in such a proceedings.”

6- In view of the aforesaid direction of the Hon'ble Supreme Court under Article 142 of the Constitution of India, to meet the ends of justice, the insurance Company was directed to satisfy the award. Therefore, in the same terms we direct that the Insurance Company shall satisfy the award and shall recover the amount of the same from the insured/owner if the liability of the insured/owner is fixed by the executing court i.e. Motor Accident Claims Tribunal.

7- For the aforesaid reasons, the appeal is disposed of accordingly subject to the directions aforementioned. The amount of compensation, if deposited here, shall be remitted to the concerned motor Accident Claims Tribunal.

(B.S. Verma, J.) (P.C.Verma,J.)

13.09.2004
P.Singh